IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1938

No. 534

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, *et al.*,

Appellants,

vs.

PAUL GRAY, INC., a California corporation, *et al.*,

Appellees.

Upon Appeal from the District Court of the United States for the Southern District of California.

BRIEF OF APPELLANTS.

With Appendices.

EARL WARREN,
Attorney General of California,

FRANK W. RICHARDS,
Deputy Attorney General of California,
Los Angeles, California.
Attorneys for Appellants.

SUBJECT INDEX.

PAGE

II.

III.

IV.

TABLE OF APPENDICES.

TABLE OF AUTHORITIES CITED.

Cases Cited.

MISCELLANEOUS.

STATUTES. PAGE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1938

No. 534

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, *et al.*,

Appellants,

vs.

PAUL GRAY, INC., a California corporation, *et al.*,

Appellees.

BRIEF OF APPELLANTS.

With Appendices.

Opinion Below.

The opinion of the District Court is reported in 23 Fed. Supp. 946 [R. 36], and the dissenting opinion at page 950 [R. 43].

Jurisdictional Statement.

Statement as to jurisdiction was filed as required, and probable jurisdiction was noted on January 9, 1939.

Statement of the Case.

This is an appeal from the final decree of a district court of three judges (Judicial Code, Sections 238 (3) and 266; U. S. C. A., Title 28, Sections 345 (3) and 380), which enjoined appellants, defendants below, officers of the State of California, from enforcing against appellees the provisions of Chapter 788, page 2253, Statutes of 1937 of the State of California [Appendix A, p. 73], as unconstitutional.

The Statute in Question.

The act in question is known as the caravan law. It became effective July 2, 1937. It was enacted by the legislature after the California Caravan Act of 1935 [chapter 402, page 1453, Statutes of 1935, Appendix B, p. 79], was held unconstitutional by this Court on March 1, 1937, in *Ingels v. Morf*, 300 U. S. 290.

Except for two important differences, which will be hereinafter noted, the two statutes are substantially similar.

The present act, in section 1, defines caravaning as

> "The term 'caravaning' as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State."

The act requires two fees, each of $7.50, for a permit for caravaning a vehicle on the California highways. A

permit is valid as to the original permittee and vehicle for a period of six months after the date of issue for the purpose of caravaning the vehicle, and no other permits or fees are required for caravaning. A permit is not transferrable from person to person or vehicle to vehicle. The permit is not limited as to routes or area.

The first difference between the present act and the 1935 act is the following:

The 1935 act (section 6) placed the fee, $15.00, in the general fund in the state treasury and recited that

> "The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted * * *."

This Court held in *Ingels v. Morf, supra,* that by reason of that express declaration the fee must be considered as exacted only for purposes of administration and enforcement, could not be considered a fee for the privilege of using the highways, was substantially larger than was necessary to defray the costs of administration and enforcement, and was therefore a forbidden burden on interstate commerce. That was the sole ground of the decision.

To meet that objection the legislature provided in the present act (section 4) for the following fees:

> "* * * a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this state and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police

> regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation."

And in section 7 the act provides that all fees shall be collected by the Motor Vehicle Department, appropriates one-half of the fees for the support of the Department of Motor Vehicles (which administers and enforces the caravan act), appropriates the other half of the fees to the state highway fund, and declares:

> "The moneys so derived by the state are intended as compensation for the privilege of using the highways of this State and to reimburse the State treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted."

The other difference between the two acts is this. The 1935 law limited its application to, and defined caravaning as (section 1):

> "* * * the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser * * *."

With respect to that this Court said in *Ingels v. Morf*, *supra*:

> "We do not discuss appellants' suggestion that, contrary to the finding below, there is no evidence of comparable traffic moving intrastate, and hence

no discrimination against interstate commerce by the failure of the Act to exact a fee of those engaged in intrastate commerce."

The present act, by section 1, applies to all caravaning, interstate or intrastate, but by section 8 creates the following exception:

"Sec. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

"Zone 1—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

"Zone 2—That part of the State of California not included within Zone 1 as herein defined.".

A map of the state showing these zones appears opposite page 32 of this brief.

It will thus be seen that all interstate caravaning, whether from without to within the state or *vice versa*, is subject to the present act, that intrastate commerce from one zone to another is also subject to the act, but that caravaning wholly within a zone is excepted.

District Court's Findings of Fact.

The District Court entered findings of fact and conclusions of law [R. 57], to which appellants have taken exception in their assignments of error [R. 169]. These will be discussed in the argument portion of this brief.

The Evidence.

The evidence consists of affidavits admitted by stipulation [R. 24] and oral testimony. Upon many points the evidence is without dispute.

In general the evidence bears upon the following matters: the type of traffic in motor vehicles on their own wheels for purpose of sale (1) interstate, (2) from one zone to another, and (3) wholly within a zone; and the cost of administration and enforcement of the act.

Counsel for the parties and the Court entered into a discussion of a proposed stipulation at pages 72-73, Record. Counsel for appellees, who offered the stipulation, apparently withdrew it and in its place put on the witness, Manford [R. 74, 75]. From the Manford testimony, or from the stipulation, it appears that at least eighty per cent of all automobiles brought into the State from without on their own wheels for purpose of sale are in convoys of three or more; and that of this eighty per cent that are in convoys, or fleets, from one-half to all are in two-car hook-ups, one vehicle towing another. This is all general evidence in general terms, apparently applying to the whole volume of the caravan traffic from without the State. No attempt was made to show that this general picture in any way is descriptive of appellees' particular operations. It is not related to appellees in any way.

Appellees' operations are specifically described, however, in the testimony of Al Asher, one of the appellees, and it was stipulated that the other appellees would testify as to their operations substantially the same as Mr. Asher [R. 107].

Mr. Asher testified [R. 105-106] that he has been engaged in caravaning automobiles into California since 1930 and that during that time he has caravaned in over 4000 cars. He has personally purchased cars, selected drivers, and conducted caravans to California. The majority of his cars come from Detroit and they are all used automobiles. His caravans consist of from 19 to 25 automobiles. To select drivers he runs an advertisement in a newspaper in Detroit advertising for drivers to drive a car to California; he interviews the drivers and selects not over half of the applicants. The driver must be 21 years old or more and must have a driver's or chauffeur's license from the state where they start. The average cost of the cars is $600 to $1000. He carries $10,000-$20,000 public liability and $5000 property damage insurance on his cars but no collision insurance. He has had two small claims which were paid by his insurance company.

He described the manner in which he conducted caravans to California as follows:

> "* * * it is my custom to put a man in front, and I have had my son in the lead, with instructions to set the pace, and govern the speed of the caravan on the road, and I ride on the rear end with a single automobile to take care of all of the details and keep the drivers in line and obeying the speed laws, and also keeping a sufficient distance apart, and their instructions were to keep at least 150 feet apart or the length of two telephone poles apart at least, and not to park except in proper places and to keep on the right side of the highway.". [R. 106-107.]

The only other movement of motor vehicles in fleets is that from one zone to another, particularly from the Los Angeles to the San Francisco area and *vice versa*.

There is a recognized and noticeable movement of that character. [Ingels and Bates affidavits, R. 113, 114, 156.]

There is no movement in fleets wholly within a zone. A considerable number of cars are moved on their own wheels for purpose of sale wholly within a zone from assembly plants near Los Angeles and San Francisco, but these vehicles are never moved in two-car hook-ups or in fleets. Usually the cars are moved singly, sometimes two single cars together but not in a hook-up, and occasionally three single cars are so moved, each of such cars being driven by a driver employed regularly and full-time for that purpose by the company doing the transporting. Such drivers are California licensed and thoroughly familiar with the routes traveled. Such cars are driven short distances, only a small percentage of the total number being driven more than 100 miles, and most of them much less. [Affidavits of Busby, Peabody, Alexander, Stater, and Ehlers, R. 126, 131, 133, 135, 136.]

The affidavits of Holm, Cron and Shaw, respectively, show in detail the length of such intra-zone drive-away movements from the Ford assembly plant near Los Angeles [R. 121], the Chevrolet assembly plant near San Francisco [R. 127], and the General Motors assembly plant near Los Angeles [R. 119], and the figures given are summarized in tables at pages 32, 34 and 35 hereof and shown graphically in a map at page 32 hereof.

Testimony of state officials shows that administration and enforcement of the act and proper policing and regulation of the caravan traffic costs the state substantially in excess of $100,000. [R. 81-104.] The volume of caravan traffic has reached more than 14,000 vehicles per year, but since the 1937 act became effective this volume has shown a substantial decrease. [R. 81, 159.]

Assignment of Errors.

1.

The Court erred in holding said Chapter 788 to be in violation of the Commerce Clause of Section 8 of Article I of the Constitution of the United States, because said Chapter 788 does not discriminate against nor impose an unconstitutional burden upon interstate commerce, nor otherwise conflict with the Commerce Clause.

2.

The Court erred in holding said Chapter 788 to be in violation of the "equal protection of the laws" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not uncontitutionally discriminate against plaintiffs or any other persons nor deny the plaintiffs or any other persons equal protection of the laws.

3.

The Court erred in holding said Chapter 788 to be in violation of the "due process of law" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not impose unreasonable requirements upon plaintiffs and does not deprive plaintiffs of property without due process of law.

4.

The Court erred because on the entire record the plaintiffs and appellees have failed to sustain the burden of overcoming the presumption of correctness of the judgment of the legislature of California that a valid need of legislation existed, and that the class defined in said Chapter 788 includes the entire class properly the subject

of such legislation, and have failed to overcome the presumption that said Chapter 788 is reasonable and non-discriminatory.

5.

The Court erred in making that part of its findings of fact No. 6 which relates to the number of vehicles brought into California each year for the purpose of sale and the number of vehicles not in convoy, the number in convoy and the number in two's, first, because there is no evidence to support such finding, second, because the evidence affirmatively shows that said finding is erroneous, third, because said finding is wholly immaterial in view of the undisputed evidence showing the manner in which plaintiffs bring their vehicles into the State of California for purpose of sale.

6.

The Court erred in making finding of fact No. 7, for the reason that there is no evidence in the record to support such finding of fact and for the further reason that the evidence in the record shows that said finding of fact is erroneous. There is no evidence to establish that there are approximately 4,000 cars transported monthly entirely within Zone No. 1 for purpose of sale upon the highways, and there is no evidence to show that said cars are often moved in convoy, the evidence showing the contrary; and there is no evidence to show that many of said cars are transported through congested districts and for considerable distances.

7.

The Court erred in making finding of fact No. 8, for the reason that there is no evidence in the record adequate to support said finding.

8.

The Court erred in making finding of fact No. 9, because the evidence shows that cars brought into the State for the purpose of sale do create serious traffic problems differing entirely from the traffic problems created by the movement of cars intra-zone.

9.

The Court erred in making finding of fact No. 12, in that the evidence shows that the operation of cars in caravans does create special and additional hazards to passing traffic or to other users of the highway, and the evidence shows that said caravaning of cars does create a traffic problem necessitating special policing of said caravans, and the evidence shows that such caravaning of cars does create undue wear and tear on the roads and highways of the State.

10.

The Court erred in making the first part of finding of fact No. 13, in that the evidence shows that the statute in question is for the purpose of permissible highway regulation and for the purpose of obtaining permissible compensation for the use of the highways of the State.

11.

The Court erred in making the second, third, fourth and fifth parts of finding of fact No. 13, because the plaintiffs and appellees have failed to sustain the burden of showing that the license fee is excessive and bears no relation to the expense of the Motor Vehicle Department in policing the highways of the state; but the evidence in fact shows the contrary.

12.

The Court erred in making the sixth part of finding of fact No. 13, in that the evidence fails to show that said Chapter 788 creates an unreasonable and arbitrary classification because it applies only to persons using the highways for the transportation of motor vehicles for the purpose of sale and does not apply to other persons using said highways under comparable circumstances. The evidence shows that the persons to whom the act applies constitutes specialized form of highway traffic substantially distinct from other traffic, which creates substantial traffic and police problems differing from those of other traffic.

13.

The Court erred in making the seventh part of finding of fact No. 13, in that the evidence fails to show that the fees charged under said Chapter 788 are disproportionate to other taxes, fees or licenses charged by the State of California for the registration of vehicles within the state or for vehicles using the highways in the State; and the evidence shows the contrary.

14.

The Court erred in making the eighth part of finding of fact No. 13, in that the evidence fails to show that the license fees provided in said Chapter 788 are exorbitant, arbitrary or unfair, or that the interstate business in which the plaintiffs are engaged will suffer irreparable damage.

SUMMARY OF ARGUMENT.

I.

The classification made by the statute is valid.

(a) The interstate traffic is the movement of motor vehicles in integrated fleets of 19 to 25 automobiles, at least half of these being in two-car hook-ups with one car with a driver towing a driverless car; the drivers are mostly obtained in eastern states by newspaper advertising, are employed for the one trip to California only; the cars are used cars; the journey is more than 2000 miles in length; the drivers drive for many hours continuously and reach California in a fatigued condition and are not as attentive to careful driving as other drivers; the operation of the fleets causes traffic problems and hazards not present in any other type of highway traffic.

(b) The interzone movement. The only movement of motor vehicles in caravans or fleets in California, in addition to the interstate movement, is that from one zone to another.

(c) The intrazone movement of motor vehicles on their own wheels for purpose of sale is so entirely different from the interstate and interzone movements as to fully justify the action of the legislature in creating the intrazone exemption. The classification which is accomplished by including the interstate and interzone movements and excluding the intrazone movement brings within the scope of the law all those who move their vehicles in integrated fleets with picked-up, one trip drivers, and leaves out those who do not do so.

(d) The validity of the classification between the interstate and interzone traffic, on the one hand, and the intrazone traffic on the other, under the evidence, is established by the decisions of this Court.

(e) The classification is not invalid because many single motor vehicles are operated upon the highways for all purposes, nor because many vehicles come into the state annually for other purposes than for sale and are not subject to the act, nor because some vehicles not in fleets may be subject to the act.

2.

The entire volume of the traffic within the act is properly included, and that not within is properly excluded. The practical classification of this traffic, made by this act, is similar to that made by statutes or administrative rulings in many other states with respect to similar traffic.

A distinguishing and common attribute of this traffic is the caravan or fleet movement of a large proportion of the vehicles, and the operation of two vehicle hook-ups, but the entire volume of traffic including the vehicles moved singly is of such a character as to justify including the entire traffic in one legislative classification.

The description of the class includes only those who actually do move vehicles in caravans, and includes all such, and of the total volume of the vehicles moved by such included persons eighty per cent is moved in caravans.

3.

The fees required are not excessive. The record shows that regulation of the traffic and enforcement of the act costs the state in excess of $133,000 annually, and that the $7.50 fee for this purpose will produce substantially less than $105,000.

4.

If any part of the act is invalid the Court should hold only that part invalid and leave the remainder of the act in effect.

ARGUMENT.

I.

The Classification Made by the Statute Is Valid.

The statute applies to all those who move motor vehicles on their own wheels on the highways in interstate commerce or from one zone to another within the state for purpose of sale. The excepted movement is that wholly within a zone. The zones are shown on the map opposite page 32 hereof.

A classification is valid which includes only those "engaged in the transportation by motor vehicle of property sold or to be sold by him in furtherance of any private commercial enterprise." *Continental Baking Co. v. Woodring*, 286 U. S. 352 at 357, note 1-(d), even though certain types of carriers so engaged are exempted, *Id.* pp. 371, 373. It is fundamental that a class may properly be defined by describing "those from whom the evil mainly is to be feared," *Patsone v. Pennsylvania*, 232 U. S. 138 at 144; and that a statute will not be adjudged unconstitutionally discriminatory unless its operation causes actual discrimination in fact, *Interstate Busses Corp. v. Blodgett*, 276 U. S. 245; *Pullman Co. v. Knott*, 235 U. S. 23; *Morf v. Bingaman*, 298 U. S. 407.

In *Morf v. Bingman, supra*, the Court sustained a New Mexico statute, the practical effect of which was to tax and regulate the movement of motor vehicles on the highways in caravans and processions. That case is applicable here because the plaintiffs move their automobiles in caravans of 19 to 25 vehicles, and the intrazone traffic which is expressly exempted is a movement of single vehicles not in caravan which is free from the objectionable character-

istics of the caravan movement described in the *Bingaman* opinion.

It is true that the District Court made some findings of fact to the contrary, but an examination of the undisputed evidence demonstrates that the Court's findings on material points are largely erroneous. Not only is there no evidence to support them, but they are against uncontradicted evidence. Even in a suit between private parties "findings may be revised at the instance of an appellant, if they are against the weight of the evidence." *Morley Construction Co. v. Maryland Casualty Co.*, 300 U. S. 185 at 191; but the rule in this case goes farther than that. As was said in *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177:

> "Hence in reviewing the present determination we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis."

The errors in the Court's findings will be pointed out as the argument proceeds.

In order to show clearly the propriety of the classification made by the statute we will now discuss in some detail the evidence which shows the type of traffic in motor vehicles on their own wheels for purpose of sale (a) interstate, (b) from one zone to another (both of these being subject to the act), and (c) intrazone, this being the exempted movement. The undisputed evidence shows that interstate and interzone caravaning are of the same type, being the movement of motor vehicles in fleets and with other distinct and objectionable features, and over long

distances; while intrazone caravaning is the movement of single cars not in fleets, for short distances, and free from the objectionable features which distinguish the interstate and interzone traffic.

(a) The Interstate Traffic.

The interstate traffic is the movement of motor vehicles integrated fleets of 19 to 25 automobiles, at least half of these being in two-car hook-ups with one car with a driver towing a driverless car; the drivers are mostly obtained in eastern states by newspaper advertising, are employed for the one trip to California only; the cars are used cars; the journey is more than 2000 miles in length; the drivers drive for many hours continuously and reach California in a fatigued condition and are not as attentive to careful driving as other drivers; the operation of the fleets causes traffic problems and hazards not present in any other type of highway traffic.

One of the plaintiffs, Al Asher, testified as to the manner of selecting his drivers and the caravaning of his cars [R. 105]. After his testimony was completed it was stipulated that the testimony of the other plaintiffs would be the same as Mr. Asher's [R. 107]. Therefore we examine the Asher testimony at length.

He has been caravaning automobiles into California since 1930, and during that time (he testified in October, 1937) he has caravaned in more than 4000 cars. He has personally had charge of caravans and selected drivers. The majority of his cars come from Detroit. They are all used automobiles, worth $600 to $1000. His caravans consist of from 19 to 25 automobiles. He obtains his drivers by running an advertisement in a newspaper in

Detroit for drivers to drive a car to California, and when the drivers appear he interviews them and selects not over half of the applicants. He has never investigated any references when given by applicants. The driver must be 21 or more years of age and must have a driver's or chauffeur's license in the state where the caravan starts. He prefers men 30 to 40 years of age. He carries $10,000—$20,000 public liability and $5000 property damage insurance on his cars. He has had two small damage claims only, these being paid by the insurance company. He then described the manner in which his caravans are operated, as follows [R. 106-107]:

> "* * * it is my custom to put a man in front, and I have had my son in the lead, with instructions to set the pace, and govern the speed of the caravan on the road, and I ride on the rear end with a single automobile to take care of all of the details *and keep the drivers in line* and obeying the speed laws, and also keeping a sufficient distance apart, and their instructions were to keep at least 150 feet apart, or the length of two telephone poles apart at least, and not to park except in proper places, and to keep on the right side of the highway." (Italics supplied.)

Here then is the picture of the manner in which the plaintiffs caravan their automobiles. If the cars keep 150 feet apart (we will point to evidence showing that caravans generally tend to close up closer), and if all single cars, they compose an integrated fleet, with front and rear conductors, 2850 feet to 3750 feet in length operating as a unit on two-lane highways (150′ x 19 = 2850′;

150′ x 25 = 3750′). The lead driver *sets the pace* and the rear driver *keeps them in line*. If the cars were all in two-car hook-ups except the lead and rear cars the length of the caravan might vary from 1500 feet to 2400 feet. The caravan represents an investment of $11,400 ($600x 19) to $25,000 ($1000x25), and all except two of the cars are in charge of drivers who were strangers to the owner of the caravan until just before the caravan started on a journey from Detroit to California, a distance of 2500 miles; drivers obtained by want-ads whose observable qualifications are limited to the possession of a driver's or chauffeur's license and the impression made upon the employer or his agent in one interview. That is why caravaning of the type carried on by the plaintiffs is conducted by the operation of *integrated, unit-operated,* caravans or fleets. That is why the owner of the caravan has a man in front whom he knows he can trust and a supervisor in the rear to *keep them in line.*

Imagine driving down a two-lane highway and trying to pass that caravan, either in the same or opposite direction of its travel. If the cars are actually 150 feet apart the passing might be accomplished by the laborious process of dodging in and out between the caravan cars to avoid collision with traffic in the adverse line; if the cars are much closer together than 150 feet such in and out dodging is impossible, and the motorist approaching from the rear must remain there and the motorist approaching from the opposite direction is going to be in constant embarrassment and peril from motorists who may grow impatient and attempt to pass from the rear.

These difficulties are further enhanced by the commonly observed fact that all vehicles on the highway do not move at a uniform rate of speed. Even a swiftly moving, perfectly coordinated caravan will come up behind a slowly moving vehicle. If the caravan remains behind, all of its ordinary difficulties of traffic congestion are greatly aggravated; if the caravan attempts to go around the slowly moving vehicle both lanes of the highway are blocked during the process.

This picture is not fancied; it is testified to by traffic officers as being the regular condition caused by the operation of caravans on the highways. E. Raymond Cato, Chief of the California Highway Patrol since January 8, 1931, stated in his affidavit [R. 158-159]:

> "The caravans which I observed ran train-like. In other words, they would remain close together, traveling in a group or fleet. Often, by remaining close to each other, the cars in such fleets would not permit traffic going in the same direction to pass a single car in the fleet, and thus interrupt the continuity of the fleet. This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet, resulting, in many instances, in head-on collisions, side-swiping, and upsets.
>
> "On the open highways said fleets would not usually drive at the maximum speed allowed (45 miles per hour), as resident drivers do, but would drive at a slightly slower speed. In general, the larger the caravan the slower the speed would be at which they traveled. This would make it necessary for

more cars to pass such fleets than would have occasion to pass the ordinary traffic."

* * * * * * * * *

"Most of these highways are, for the greater part of their length, two-lane highways, traversing routes which have numerous curves (both horizontal and vertical) and grades in the road, and which pass through numerous small towns whose main streets and only through streets are such two-lane highways."

Earl W. Personious, a Captain of the California Highway Patrol, testified:

"I draw a distinction between intra-zone traffic and inter-state traffic in so far as caravans are concerned because of the fleet movement of cars coming from without the State. The main route that I am familiar with is U. S. 40 coming through Truckee and there is a large amount of fleet movement over that highway. The fleet movements are entirely inter-state." [R. 82.]

He testified that all of the highways entering the portion of California under his supervision are two-lane highways and pass through a mountainous area, and that the hazard from driving over such area is increased by reason of the movement of cars in fleets [R. 85-86], and that

"* * * In addition to that is the normal flow of traffic which will congest in mountain roads, more or less, but where you have the hook-ups in fleets, I have known the congestion in traffic to be for a half or three-quarters of a mile, and where it would be impossible to get by the fleet in hook-ups." [R. 86-87.]

He testified that it is customary practice in fleet movements to maintain the fleet as a unit on the highway [R. 87], and that:

> "Single cars pile up in normal traffic, but as soon as there is a space, one will go by and pass another, and in a very little ways you will have a clear distance and the congestion is over, whereas with caravans they are all held together and continue with the congestion and there is that hazard throughout the mountain highway, or until you come to a highway and have more open highways." [R. 87.]

> "From my observation of the fleet movements of cars over the highways under my supervision, and from my observation of those highways, those highways as at present constructed are not adequate to safely accommodate the caravan-type of traffic. I apply that to the border mountain counties more than the others on account of winding hazards." [R. 89.]

> "The tendency is for the cars in the group to keep together and that is where the problem comes in—the tendency to keep together on the highway." [R. 99.]

Some of the reasons for this fleet movement are disclosed in the affidavit of Ray Ingels, Director of Motor Vehicles of California, as follows:

> "The reasons for the movement of automobiles as above described in fleets or groups on their own wheels for purpose of sale are as follows: Automobiles that are to be moved into the State of California originate

used cars can be cheaply purchased or where new cars are manufactured. Such points of origin are principally mid-continent points. This necessitates a long movement to destination. The owners of the cars therefore originated the system of gathering together a fleet of vehicles so to be moved and putting them in charge of a caravan manager and a mechanic to supervise their movement to California. In the case of the movement of used cars, it is particularly desirable to have the fleet accompanied by a mechanic who can make necessary repairs enroute. Drivers of caravaned cars are often unacquainted with routes and it is desirable and necessary to have them accompanied by one who is familiar with routes and can be relied upon to see that the vehicles are brought to destination. Most of the drivers of caravan cars are employed for the one trip only from eastern points to destination within California. They are obtained by advertising or other solicitation. Various arrangements for compensation for making the trip are made with them, but in most cases one element of compensation the drivers consider of value is the opportunity to receive transportation to California. After arrival in California such drivers remain there and do not return east. The caravan manager takes a fleet of cars with drivers of that type in charge and buys gasoline and meals and pays other expenses of the trip The management of a group of drivers and cars by one experienced individual results in a saving of expenses because of the collective handling of the finances of the trip.

"Because of the reasons which have led to the movement of vehicles in fleets there are comparatively few cars that are moved from without the State of California to within the State for purpose of sale singly, and not in a fleet." [R. 113-114.]

"Where vehicles are moved in fleets it is the practice to stop the entire fleet when one vehicle has mechanical trouble and requires repairs. This is to keep the fleet together under the supervision of the caravan manager and to keep it within access of the mechanic. A fleet also stops for meals or when for any other reason it is necessary for any one car to stop. This frequently results in causing a traffic tie up on the highway because when a fleet stops the rear cars will pull out into the adverse lane. Even when a fleet is stopped upon the highway and all vehicles are in the right lane vehicles approaching from either direction have difficulty in passing the fleet because of its occupancy of a long stretch of one of the traffic lanes. This difficulty is accentuated when the fleet is in motion on the highway." [R. 115.]

"I have personally talked with drivers of caravan cars who have brought such cars from without the state to within the state and they have told me of driving sixteen or eighteen hours out of twenty-four in order to arrive in California in the shortest possible time. They state that as a general practice stops for meals are irregular and the time allowed for meals is short. Drivers that I have talked with and observed immediately upon their arrival at destinations in Cali-

fornia have shown evidence of fatigue and weariness and have expressed themselves as very tired from the long trip." [R. 114.]

The same and other reasons for the fleet movement are pointed out in the affidavits of Tod Bates, General Manager of the Motor Car Dealers' Association of San Francisco [R. 150], and Glenn S. Roberts [R. 138].

District Court's Findings of Fact.

In view of the foregoing evidence, all undisputed, much furnished by the testimony of the appellees themselves, it is plain that there is absolutely no foundation for the District Court's findings of fact Nos. VI, IX, and XII. [R. 63-65.] Certainly this evidence is sufficient to sustain the legislative judgment. *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177.

(b) The Interzone Movement.

The only movement of motor vehicles in caravans or fleets in California in addition to the interstate movement, is that from one zone to another. This is established by undisputed evidence.

Ray Ingels, Director of Motor Vehicles of the State of California, stated in his affidavit:

> "In addition to the movement from without to within the State the only other movement in fleets or groups is the occasional movement of automobiles in fleets or groups for the purpose of sale from the Los Angeles area to the San Francisco area, or vice

versa, and the occasional movement of automobiles in fleets or groups for purpose of sale from the Los Angeles or San Francisco areas to points outside of the state." [R. 113.]

After describing the reasons which had led to the fleet movement from without to within the state, Mr. Ingels stated:

"For some of the same reasons when a number of cars are to be moved from the Los Angeles area to the San Francisco area, or vice versa, on their own wheels for purpose of sale, dealers find it expedient to move them in fleets. The same is commonly true to the movement of vehicles for purpose of sale moved on their own wheels from California points to without the State." [R. 114.]

Tod Bates, general manager of the Motor Car Dealers' Association of San Francisco, having many years' experience as an automobile dealers' association executive, stated in his affidavit:

"* * * that at certain seasons in the year and under certain circumstances there is a movement of used cars originating at Los Angeles and destined for San Francisco and vicinity; that there are only two main traveled, practicable highways between the two principal cities in California, and that at points located approximately at the line between zone one and zone two the two highways in question are virtually bottlenecks, that is they are narrow, two lane roads and are frequently subjected to congestion,

and that such congestion as exists would be augmented and aggravated by the encouragement of a greater volume of through traffic between the two cities above mentioned, and particularly of the fleet or caravan movement of cars; that when such caravaning is conducted, originating at Los Angeles and destined to San Francisco, the movement usually consists of used automobiles and is usually consummated by the operation of hook-ups in fleets or caravans in substantially the same manner as the interstate movement heretofore described." [R. 156.]

District Court's Findings of Fact.

From the foregoing, also undisputed, it is evident that the District Court's finding of fact Nos. VII and XIII [R. 63, 65] are not only without support but they are contrary to the undisputed evidence.

(c) The Intrazone Movement.

The intrazone movement of motor vehicles on their own wheels for purpose of sale is so entirely different from the interstate and interzone movements as to fully justify the action of the legislature in creating the intrazone exemption. The classification which is accomplished by including the interstate and interzone movements and excluding the intrazone movement brings within the scope of the law all those who move their vehicles in integrated fleets with picked-up, one trip drivers, and leaves out those who do not do so. This is established by undisputed evidence.

A number of witnesses testified or presented affidavits showing the foregoing to be true. W. J. Holm, traffic manager of the Ford assembly plant at Long Beach, California, a suburb of Los Angeles, and George D. Cron, traffic manager of the Chevrolet assembly plant at Oakland, California, presented affidavits [R. 121, 127] stating in detail the number and destinations of cars moved intrazone from such plants on their own wheels during representative periods, and manner of such movements. M. F. Shaw, manager of the Pacific Motor Trucking Company in Southern California, described in his affidavit the transportation of General Motors cars from the assembly plant at Southgate, California (near Los Angeles), showing by a schedule the detailed movements of vehicles from such plant on their own wheels [R. 119].

Preliminary to considering this specific data, however, we present the general statements of a few witnesses.

Ray Ingels, Director of Motor Vehicles of the State of California, stated in his affidavit:

> "I know the geographical location of the counties of California that are placed within zones 1 and 2 by Section 8 of Chapter 788, California Statutes of 1937. I know that from one point to another within a single zone there is no movement of automobiles upon their own wheels for purpose of sale in fleets or groups. The reasons which induce the movement of vehicles in fleets from without to within the State of California and *vice versa*, and from one zone to another in the state, do not obtain in the movement wholly within a zone. Such movement, aside from

the movements from assembly plants, consist of the occasional movement of single cars from one point to another.

"The movement of single cars not in fleets upon their own wheels for purpose of sale in California is conducted almost entirely between points within a single zone. Cars so moved are driven by California residents who are mechanics or chauffeurs regularly employed by the dealers owning such cars. Such movement in its entire length necessarily consumes only a few hours and the drivers are not fatigued during any portion of the journey." [R. 114-115.]

* * * * * * * *

"Cars that are moved from assembly plants in California to the place of sale on their own wheels are not moved in groups or fleets, nor in two car hook-ups but are moved singly a car at a time, such movement being confined in all except a comparatively few instances to an area of about a fifty mile radius around such assembly plants, with occasional movements as far as 100 miles and a very few beyond a hundred miles." [R. 113.]

Earl W. Personius, Captain of the California Highway Patrol, testified:

"I draw a distinction between intra-zone traffic and interstate traffic in so far as caravans are concerned because of the fleet movement of cars coming from without the state. * * * The fleet movements were entirely interstate." [R. 82.]

Tod Bates, General Manager of the Motor Car Dealers Association of San Francisco, stated in his affidavit [R. 154-155]:

"Affiant further states that there is no such fleet movement of vehicles wholly between points within Zones 1 or 2, respectively, as said zones are defined in Chapter 788 of the California Statutes of 1937; that new car assembly plants and distributors in California, customarily deliver new cars to dealers, for sale, by either the 'drive-away' method or the 'truck-away' method; that the latter method is customarily employed for deliveries outside of the metropolitan areas of San Francisco-Oakland, and Los Angeles, respectively; that practically all of the 'drive-away' deliveries of new cars in California are confined to the San Francisco-Oakland metropolitan area in the Northern part of the State and the metropolitan area of Los Angeles County in the Southern part of the State, such deliveries usually being within districts of 30 miles from the assembly plant. Within said areas there are sufficient highways so that there is no congestion or additional hazard caused by such deliveries; the cars so 'driven-away' for delivery are always operated singly, not in hook-ups, and never in groups of more than four cars; the cars so delivered are driven by regular employees of the person furnishing the carrier service by which such deliveries are made, or by regular employees of the dealer taking delivery, or by the individual purchaser taking delivery; that such persons are therefore familiar with California traffic laws and practices, are engaged in a transportation movement which is completed in an elapsed time which usually does not exceed one hour, are in good physical condition, are thoroughly familiar with the highways and traffic conditions which prevail on

the roads which they traverse, and have an interest in their permanent employment and/or in the car which they are driving."

George D. Cron, traffic manager of the Chevrolet assembly plant at Melrose, California (adjoining Oakland), presented an affidavit describing in detail the movement of automobiles from such plant on their own wheels [R. 127]. All authorized Chevrolet dealers in California receive from such assembly plant all passenger cars and trucks which they distribute. The usual mode of delivery is by rail, boat or truck; in the last-named method the vehicles are carried on a truck. Vehicles are delivered from the assembly plant on their own wheels only in cases of shortage of automobiles or trucks to complete truck or carload units. The San Francisco-Oakland metropolitan area consists of the cities of San Francisco, Oakland, Alameda, Albany, Berkeley, Burlingame, Colma, Emeryville, Hayward, Mill Valley, Richmond, San Bruno, San Leandro and San Rafael (all within 20 miles from Melrose). From January 1, 1937, to July 31, 1937, 675 vehicles were delivered from the assembly plant on their own wheel to consignees outside of such metropolitan district. All other deliveries during such period made outside such metropolitan district were made by rail, boat or truck. Such period is a typical seven months period. All such vehicles so driven on their own wheels were driven by a full-time employee of the Auto Transportation Division of the Pacific Motor Trucking Company.

"That all 'drive away' deliveries were and are made in single-car or two-car lots, each vehicle being individually driven; that such 'drive away' deliveries were and are never made by grouping three or more cars in a train or fleet; that whenever it is necessary

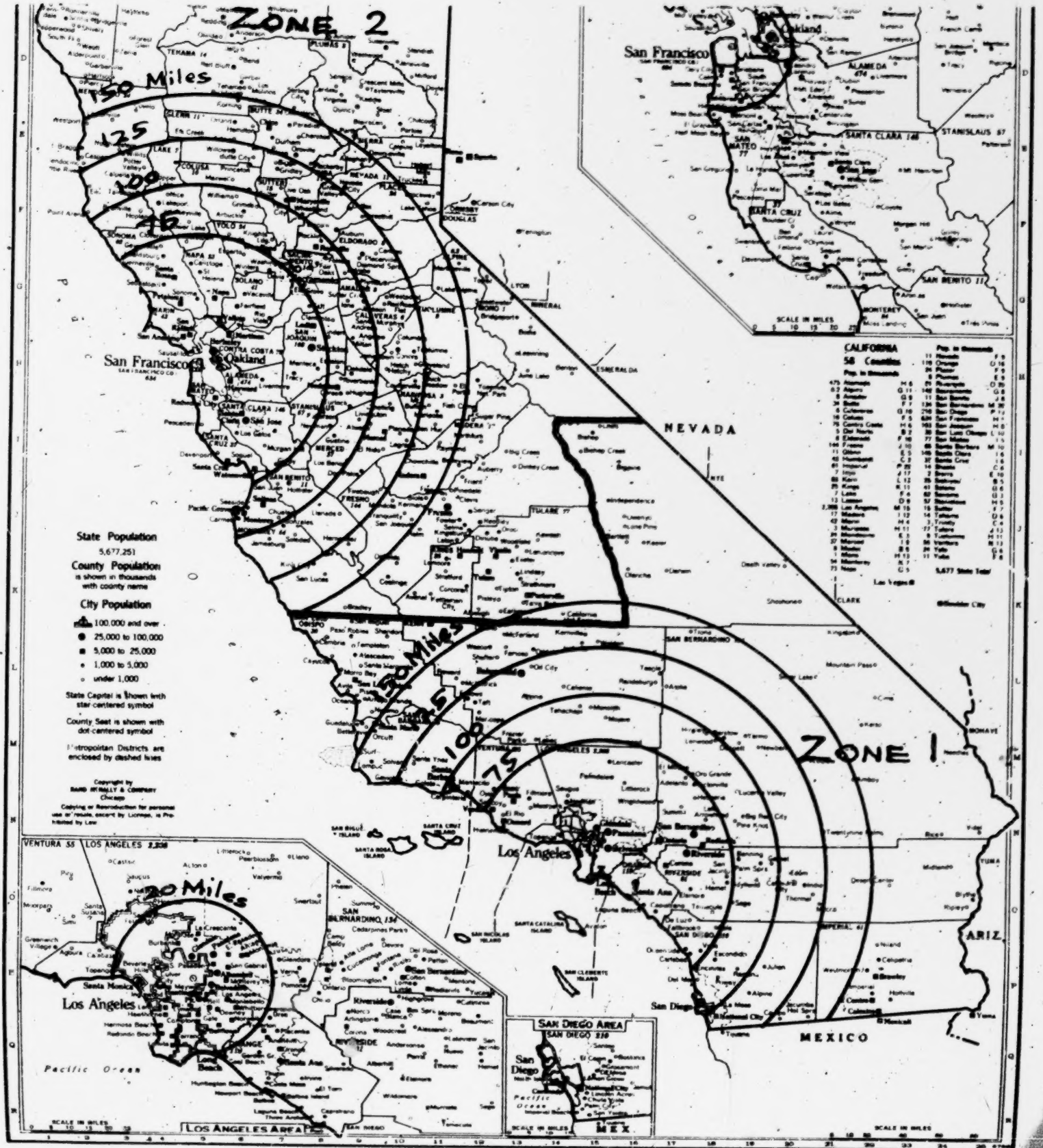
to make deliveries of three or more vehicles to the same consignee or group of consignees, such delivery is made by transporting said vehicles upon trucks; that there is and has been no fleet movement of new cars upon the public highways in California from said assembly plant." [R. 128, 129.]

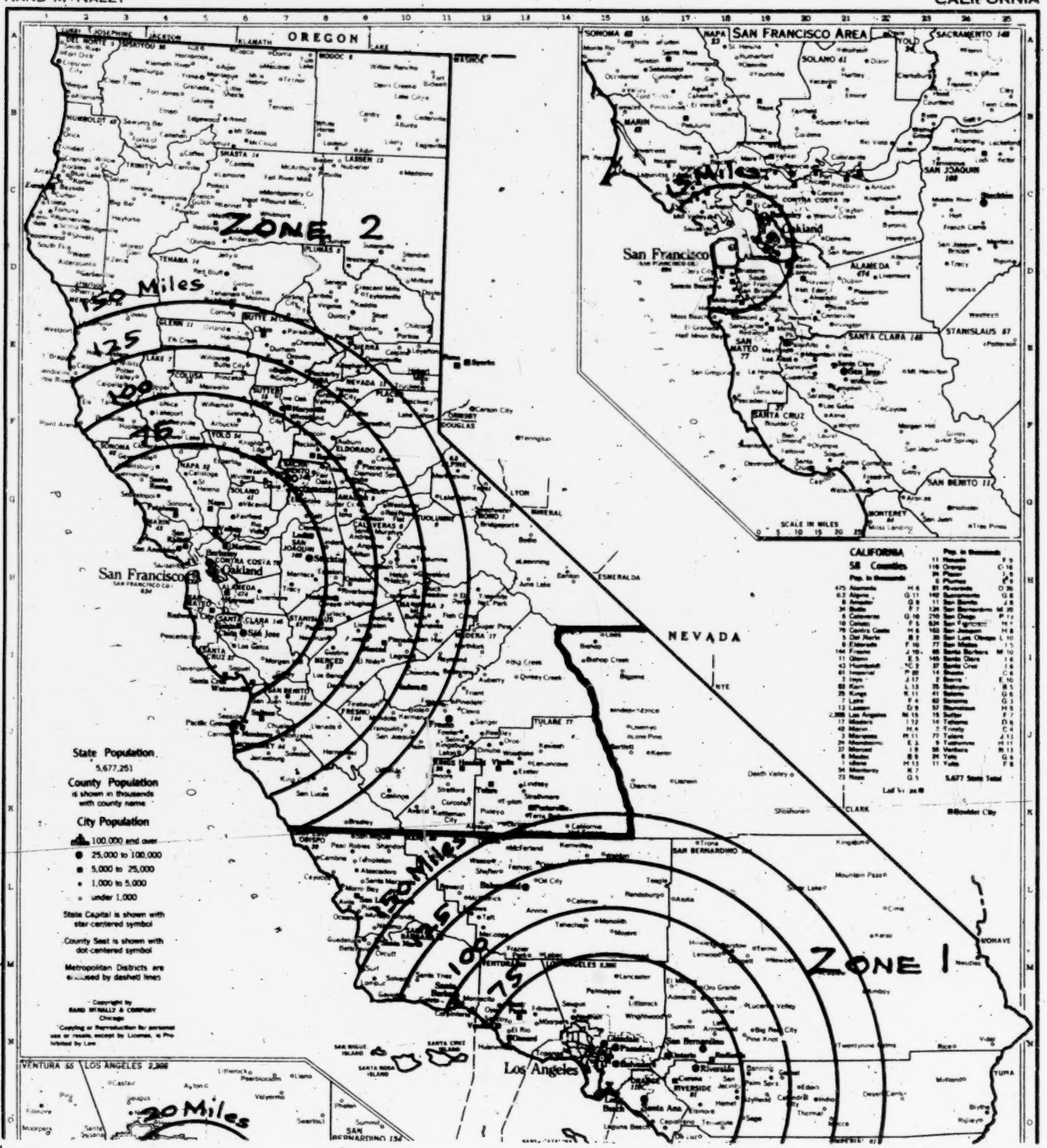
Attached to such affidavit is an itemized list showing the destinations of all of the 675 vehicles so delivered on their own wheels to consignees outside such metropolitan area [R. 129]. Seven of these were delivered to Douglas, Arizona, and were therefore subject to the act. The following is an analysis of such list, showing the distances the other 668 vehicles were driven:

Number of cars	Distance From Plant to Destination	Per Cent of Total
516	Less than 75 miles	77 plus
107	75 to 100 miles	16 plus
34	100 to 125 miles	5 plus
1	125 to 150 miles	0.15
10	over 100 miles	1.5 plus
668		

(Map)

The map opposite this page shows the two zones into which the state is divided, by the heavy black line which divides the state into north and south halves. In the upper right-hand corner a circle with a radius of fifteen miles encloses the cities which constitute the San Francisco-Oakland metropolitan area, as above described in the Cron affidavit. The itemized list attached to the Cron affidavit and the above table are further explained in that


ZONE 2
150 Miles
125
100
75
ZONE 1
50 Miles
25
10
20 Miles
San Francisco
Oakland
Los Angeles
San Diego
NEVADA
MEXICO
ARIZ
Pacific Ocean
State Population
5,677,251
County Population
is shown in thousands
with county name
City Population
100,000 and over
25,000 to 100,000
5,000 to 25,000
1,000 to 5,000
under 1,000
State Capital is shown with star-centered symbol
County Seat is shown with dot-centered symbol
Metropolitan Districts are enclosed by dashed lines
Copyright by
RAND MCNALLY & COMPANY
Chicago
Copying or Reproduction for personal use or resale, except by License, is Prohibited by Law
CALIFORNIA
58 Counties
SAN DIEGO AREA
LOS ANGELES AREA
SCALE IN MILES


OREGON
NEVADA
ZONE 2
ZONE 1
150 Miles
125
100
75
50
150 Miles
100
75
20 Miles
San Francisco
Oakland
Los Angeles
SAN FRANCISCO AREA
SCALE IN MILES
CALIFORNIA
58 Counties
State Population
5,677,251
County Population
is shown in thousands
with county name
City Population
100,000 and over
25,000 to 100,000
5,000 to 25,000
1,000 to 5,000
under 1,000
State Capital is shown with
star-centered symbol
County Seat is shown with
dot-centered symbol
Metropolitan Districts are
enclosed by dashed lines
Copyright by
RAND McNALLY & COMPANY
Chicago
Copying or Reproduction for personal
use or resale, except by Licensee, is Pro-
hibited by Law
5,677 State Total

part of the map comprising Zone 2 by the circles which have San Francisco as their center and which show distances of 75, 100, 125 and 150 miles from San Francisco, these being the distances used in the foregoing table. San Francisco is used, conservatively, as the center of the metropolitan area.

W. J. Holm, head of the traffic division of the Long Beach, California, branch of the Ford Motor Company, described in his affidavit [R. 121] the transportation of Ford cars and trucks from such plant. All authorized Ford dealers in Arizona, Southern California, and certain points in Nevada and Mexico receive the vehicles which they distribute from such plant except occasional carloads from other assembly plants. Attached to his affidavit is a detailed statement showing the destinations of all vehicles, 130, driven from such plant on their own wheels during April and May, 1937. All other vehicles delivered during that period were moved by truck, rail or boat. This statement represents a typical period of operation of such plant. Each of the vehicles driven away was moved singly, practically all being driven by a full-time employee of the dealer taking delivery, not to exceed 3 per cent being delivered directly to the purchaser. Not more than two vehicles are ever driven away together, and each of these is in charge of a separate driver.

An examination of this detailed statement [R. 122] shows that of the 130 drive-away vehicles, 13 went to Arizona and Nevada and were therefore subject to the act. The following table is an analysis of the distances the remaining 117 cars were moved:

Number of Cars	Distance From Plant to Destination	Per Cent of Total
81	Less than 75 miles	69.2
10	75 to 100 miles	8.5
9	100 to 125 miles	7.7
4	125 to 150 miles	3.4
13	over 150 miles	11.2
117		

Mr. Holm's detailed statement and the above table are further explained by the map opposite page ..... hereof. In Zone 1 circles are drawn, with Long Beach as the center, to show distances of 75, 100, 125 and 150 miles, these being the distances used in the foregoing table.

The intrazone movement of vehicles is also described in the affidavit of Roy S. Busby, traffic manager, Southern California Division of General Motors Corporation, South Gate, California (near Los Angeles), which assembles new Buick, Oldsmobile and Pontiac cars [R. 120]. All authorized dealers in such cars in California, Arizona, Idaho, Nevada, Oregon, Utah and Washington receive all of their cars from such plant or from the factories in Michigan. He describes what he terms the "Metropolitan Area" of Los Angeles County, and the area so described is shown in the lower left-hand corner of the map enclosed by a circle with a radius of twenty miles, with Los Angeles as the center.

Deliveries in such area are usually made by driving the cars, and outside of such area by rail, boat or truck. From January 1, 1937, to June 30, 1937, 18 vehicles were delivered outside such area on their own wheels. Each of the vehicles driven away from such plant was driven

singly by a driver who is a full-time employee of the Pacific Motor Trucking Company, and no more than two of such cars were driven in one group. Such six months period is a typical period.

The affidavit of M. F. Shaw, district manager of the Pacific Motor Trucking Co. [R. 119] further explains the foregoing Busby affidavit. It describes how cars are trucked or driven away from the General Motors Southgate assembly plant. All cars driven away are driven singly by a full-time employee of the company, who is a licensed chauffeur of California, is under $500 bond, and is furnished with return transportation. An analysis of the schedule attached to the Shaw affidavit shows that most of the drive-away deliveries were made less than 20 miles from the assembly plant. Out of the 10,595 cars delivered from such plant on their wheels from January 1 to June 30, 1937, only 18 were delivered a distance of more than 20 miles from the plant, as follows:

Number of Cars	Destination	Miles From Assembly Plant
2	Banning	80
1	Bishop	240
5	Hemet	70
1	Lancaster	55
3	Mohave	80
5	Oceanside	65
1	Red Mountain	100
Total 18		

That is what Mr. Busby meant in his affidavit that 18 cars were delivered outside the metropolitan area of Los Angeles from the assembly plant from January 1, 1937, to June 30, 1937.

In regard to the drive-away deliveries from the Chrysler Motor assembly plant in Maywood, California (contiguous to Los Angeles), the affidavit of J. M. Hunt, supervisor of planning and traffic at the plant, discloses [R. 149]:

> "* * * that all deliveries from said plant to dealers within the metropolitan area of Los Angeles County are made as 'drive-away' deliveries; that outside of said metropolitan area deliveries from said plant are usually made on trucks, by rail, by boat, or other method of conveyance other than by being driven on their own wheels; that on some occasions, however, 'drive-away' deliveries of trucks, and very rarely of passenger vehicles, are made to points outside said area; that during the period from January 1, 1937, to July 31, 1937, such deliveries outside of said metropolitan area did not exceed two hundred (200) vehicles, which deliveries were usually made in units of one or two vehicles, although on some occasions units of three or four vehicles were delivered; that except on rare occasions all deliveries now made outside of said metropolitan area are made on truck or other method than as 'drive-away' deliveries; that 'drive-away' deliveries to points outside said area have been discontinued except in emergency instances."

Here, again, the difference in the method of making such deliveries from that employed in ordinary caravaning operations from outside of the State of California is brought out by the statement in such affidavit:

> "That each vehicle delivered by said 'drive-away' method was and is driven by an employee of the single contract carrier who conducts all of the 'drive-away' delivery operations of said assembly plant, except that on rare occasions such 'drive-away' de-

liveries were and are made either by the retail purchaser taking delivery at the factory, or by the dealer or distributor or his employee, taking delivery at the factory." [R. 150.]

In regard to this same assembly plant, the witness Frank B. Murchison, called by the plaintiffs, testified that he was the carrier who handled all of the deliveries from said Chrysler factory. He stated that they deliver by the drive-away method from such plant approximately 1500 to 1700 automobiles per month. These cars, he stated, were moved in groups of two or three or four, but each car was driven by a separate driver. These drivers are permanently employed by such carrier and each is a licensed chauffeur in the State of California [R. 77-79]. It is evident, in connection with the testmony of this witness, that of these 1500 to 1700 vehicles per month which he stated were the number of deliveries made by driving the vehicles on their own wheels, practically all of them were within the metropolitan area in Los Angeles County, as is disclosed by the aforesaid affidavit of the traffic manager of the Chrysler plant. Here again, then, there would be no occasion or tendency to drive such cars in *fleets*.

This witness, Murchison, also gave certain testimony with regard to the quantity of "truck away" operations conducted by him for the Chrysler assembly plant [R. 77-78]. He stated that they "truck away" deliver "a little less" than they drive away for delivery, "possibly 1500 or 1600" [R. 77-78]. The difference in method of this type of delivery from the method of caravaning cars into the State of California for the purpose of sale is self-evident. In this regard, however, it should not be overlooked that such operations by one in the business

of hauling property for hire already have been subjected to what the Legislature has determined is a proper fee for that use of the highways, in addition to having paid the extra registration and license fee based upon the weight and size of the vehicle, as provided by the Vehicle Code.

Appellees also produced a witness, Charles E. Miske, who testified [R. 79] that he was manager of a company engaged in the business of driving new White, Reo, Mack and International trucks for the purpose of sale. His testimony was to the effect that they delivered on the average of 25 trucks per month in zone number 1 and 250 or 300 per month from San Francisco, which is Zone 2. It is not disclosed, however, what portion, if any, of such deliveries is made to points which are considerably distant from the point of origin of the transportation. Furthermore, the drivers of said trucks were all licensed drivers, regularly employed, and the deliveries were usually made singly [R. 79, 80].

In addition to the foregoing testimony in regard to transportation of motor vehicles upon the highways on their own wheels for the purpose of sale within a single zone in the State of California, it was stipulated that approximately 250 cars per month were so delivered from the Studebaker assembly plant in Maywood, California (near Los Angeles), to points within a radius of 30 miles of said plant, the drivers of said cars being registered licensed drivers in California and the cars being moved in units of one in charge of a single driver [R. 80].

It was further stipulated that on an average of 100 new International trucks per month are transported over the highways in Zone 1 on their own power, 30 per cent

of said trucks moving in units of two, 50 of said 100 having been previously moved on the highways from San Pedro to Los Angeles, a distance of approximately 20 miles, in units of two. Seventy per cent of said 100, which are ultimately delivered for sale, are delivered within said metropolitan area of Los Angeles County. It is not shown where or how the balance of said trucks are delivered [R. 81].

Substantially the same evidence as to the intrazone movement of automobiles is supplied as to the distribution of De Soto and Plymouth cars in Northern California [Peabody affidavit, R. 127]; as to the distribution of Chrysler and Plymouth cars in Northern California [Alexander affidavit, R. 131]; as to the distribution of Hudson automobiles in Northern California [Stater affidavit, R. 133]; as to the distribution of Dodge and Plymouth cars in Northern California [Ehlers affidavit, R. 135]; and as to the distribution of Cadillac and La Salle cars in Northern California [Adams affidavit, R. 147].

(d) The Validity of the Classification Between the Interstate and Interzone Movements, on the One Hand, and the Intrazone Movements on the Other, Under the Evidence, Is Established by the Decisions of This Court.

The decisions of this Court recognize the necessity and validity of zoning provisions and exemptions in motor vehicle tax and regulatory laws, and the propriety of distinguishing between ordinary and unusual use of the highways, between long and short hauls by motor vehicles, and between fleet and nonfleet operations.

See:

Continental Baking Co. v. Woodring, 286 U. S. 352;

Sproles v. Binford, 286 U. S. 374;

Hicklin v. Coney, 290 U. S. 169;

Aero Mayflower Transit Co. v. Georgia Public Service Commission, 295 U. S. 285.

In *Continental Baking Co. v. Woodring, supra*, there was involved a classification for purpose of taxation and regulation of those who (like appellees) were "engaged in the transportation by motor vehicle of property sold or to be sold by him in furtherance of any private commercial enterprise" (286 U. S. at 357, note 1-(d)). The act was attacked as violative of the commerce clause and the Fourteenth Amendment on the ground, among others, that certain exemptions rendered the act discriminatory.

One exemption was of those who have an established place of business or base of operations within a city or village and operate within a radius of twenty-five miles beyond the municipal limits. In holding this valid the Court said (pp. 370-371):

> "We think that the Legislature could properly take these distinctions into account and that there was a reasonable basis for differentiation with respect to that class of operations. In this view, the question is simply whether the fixing of the radius at twenty-five miles is so entirely arbitrary as to be unconstitutional. It is obvious that the Legislature, in setting up such a zone, would have to draw the line somewhere and, unquestionably, it had a broad discretion as to where the line should be drawn. In exercising

that discretion the Legislature was not bound to resort to close distinctions or to attempt to define the particular differentiations as to traffic conditions in territory bordering on its various municipalities."

The act was further attacked because it exempted from the classification "the transportation of livestock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle" (286 U. S. at 371). It should be kept in mind that Continental Baking Co. was engaged in interstate commerce, transporting its own property to market in its own vehicles. The exemption favored those doing precisely the same thing, many of them obviously engaged solely in intrastate commerce. This Court recognized, however, that the true basis of the classification was not between those engaged in interstate and those engaged in intrastate commerce, but was, as is true in the instant case, between those conducting, habitually, a burdensome motor vehicle traffic and those making an ordinary use of the highways. On this the Court said (286 U. S. at 373):

> "The (District) Court found a practical difference between the case of appellants 'who operate fleets of trucks in the conduct of their business and who use the highways daily in the delivery of their products to customers' and that of 'a farmer who hauls his wheat or livestock to town once or twice a year'. *The Legislature, in making its classification, was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which, by reason of their habitual and constant use of the highways, brought about the conditions making regulation imperative and created the necessity for the imposition of a tax for maintenance and construction.*" (Italics supplied.)

In *Sproles v. Binford*, 286 U. S. 374, there were motor vehicle length and load limitations, with exemption to vehicles operated "between points of origin, or destination, and 'common carrier receiving or loading', or unloading points" (286 U. S. at 393). This was plainly a zoning provision, with a zone of indefinite size. The exemption was sustained because relating to shorter hauls than made by the included class and because "those who come within the exception transport under distinctly different circumstances from other persons using the highways" (p. 394).

Now this, again, was a classification between interstate and intrastate commerce; the general limitations applied to vehicles employed in interstate operations (pp. 389-390), while the exception necessarily was confined to traffic conducted within the areas defined, most of which areas, perhaps all, necessarily would lie entirely within the boundaries of the state (pp. 394-395). But this Court recognized that the classification was not actually between interstate and intrastate commerce, that the effect on interstate commerce was "merely an incident" (289 U. S. at p. 95), and that the justifiable basis of the classification was the difference between two forms of vehicular traffic.

These principles are applied in *Hicklin v. Coney, supra*, and *Aero Mayflower Transit Co. v. Georgia Public Service Comm., supra.*

In *New Mexico ex rel. McLean v. Denver & Rio Grande R. R. Co.*, 203 U. S. 38, a statute was sustained which distinguished between interstate and intrastate commerce, putting a license fee on the former. The Court said (p. 54):

> "But legislation is not void because it meets the exigencies of a particular situation."

(e) THE CLASSIFICATION IS NOT INVALID BECAUSE MANY SINGLE MOTOR VEHICLES ARE OPERATED UPON THE HIGHWAYS FOR ALL PURPOSES, NOR BECAUSE MANY VEHICLES COME INTO THE STATE ANNUALLY FOR OTHER PURPOSES THAN FOR SALE AND ARE NOT SUBJECT TO THE ACT, NOR BECAUSE SOME VEHICLES NOT IN FLEETS MAY BE SUBJECT TO THE ACT.

The District Court in its opinion [R. 39-40] and in findings of fact Nos. VI, XII, and XIII [R. 63-65], apparently held the classification invalid or unwarranted because a large number of motor vehicles are registered in California and a large number of foreign registered vehicles come into the state each year, compared with which the number of vehicles subject to the act is small; and because some vehicles subject to the act are operated not in hook-ups and not in fleets.

In emphasizing these points the Court ignored or overlooked two decisive and related factors: (1) that all of the appellees move their vehicles in integrated fleets of 19 to 25 vehicles, and (2) that in *Morf v. Bingaman*, 298 U. S. 407, this Court said in sustaining the classification, made by the practical operation of a statute, of those moving vehicles in fleets:

> "* * * it is shown affirmatively that the cars transported for sale by appellant move in caravans. The classification of the statute thus, in its practical operation, embraces and is constitutionally applicable to cars moving in caravans, the class of traffic in which the appellant engages and on which he is alone taxed. * * * Discrimination, if any, is between those who drive their cars to market singly and others who drive them for other purposes, and may be sub-

jected to a different tax. Appellant does not assert that he belongs to either class. As the traffic in which he participates is properly taxed, he cannot complain of the imposition of the tax on a business which he does not do."

We do not overlook the possible claim that appellees move some of their cars singly, not in hook-ups and not in caravans. But we submit that the evidence cannot possibly be construed to support such a claim, even by inference. As has been pointed out above, one of the appellees, Al Asher, testified as to the manner of movement of his vehicles in integrated caravans of 19 to 25 cars, with two men in charge, one in front and the other in the rear [R. 105], and it was stipulated that the other plaintiffs would testify substantially as Mr. Asher testified. [R. 107.]

If we refer to the colloquy between the Court and counsel at pages 72-75, Record, and to the testimony of appellees' witness, Manford [R. 75], there is nothing in that which shows any attempt by appellees to make such facts as were therein adduced applicable to the particular caravaning operations conducted by appellees. Such facts were in plain and unambiguous terms made to apply only to the general statistics of the caravan traffic and not to any appellee or to the appellees in general. Appellees throughout the record showed no intention at any time to claim that they moved their vehicles in any other way than in caravans. The reason for this is apparent; they bring their vehicles from Detroit or other points in the middle

west, employ one-trip drivers obtained by want-ads, and therefore obviously follow the general caravan practice testified to by Mr. Asher.

Furthermore, it seems apparent that the attempted stipulation which was the subject of the discussion between court and counsel at pages 72-75, Record, was withdrawn by counsel for appellees [R. 74-75], and instead counsel called his witness, Manford, whose testimony was in some respects different from the withdrawn stipulation. Manford testified that at the Yermo No. 8 station of the Department of Motor Vehicles, where he is now stationed, more cars subject to the caravan act come through singly, not in hook-ups and not in convoys, than at any other stations; that 20 to 25 per cent of the cars subject to the act coming through his station are such singles, and the rest are in hook-ups and in convoys with other cars. [R. 76.] This is the only evidence on that point, was general only, did not relate to any of the appellees, and the appellees made no attempt whatsoever to show that it was in any way or degree applicable to their operations. They were content to identify their operations only with the 19 to 25 vehicles caravan operation testified to by Mr. Asher.

However, we proceed in the next division hereof to submit that the act is valid as to the entire volume of the traffic included, both as to singly operated vehicles and as to fleets.

II.

The Entire Volume of the Traffic Within the Act Is Properly Included, and That Not Within Is Properly Excluded. The Practical Classification of This Traffic Made by This Act Is Similar to That Made by Statutes or Administrative Rulings in Many Other States With Respect to Similar Traffic.

A Distinguishing and Common Attribute of This Traffic Is the Caravan or Fleet Movement of a Large Proportion of the Vehicles, and the Operation of Two Vehicle Hook-ups, but the Entire Volume of Traffic Including the Vehicles Moved Singly Is of Such a Character as to Justify Including the Entire Traffic in One Legislative Classification.

The Description of the Class Includes Only Those Who Actually Do Move Vehicles in Caravans, and Includes All Such, and of the Total Volume of the Vehicles Moved by Such Persons Eighty Per Cent Is Moved in Caravans.

STATE AND FEDERAL CLASSIFICATION OF THIS TRAFFIC.

Many states, and the Interstate Commerce Commission in the administration of the Motor Carrier Act, 1935, 49 U. S. C. A. 301-327, now classify the caravan movement as a distinct type of highway traffic, and when conducted for hire as the transportation of property for compensation. The state regulation and taxation have been accomplishd by the enactment of specific statutes or by administrative rulings that existing statutes are applicable.

In the following states statutes have been enacted for the specific purpose of regulating and taxing the move-

ment of motor vehicles on their own wheels for purpose of sale.

Arkansas, Act 183 of the General Assembly, 1935, as amended.

Idaho, 2nd Extra. Ses. L., 1935, ch. 2 (sustained in *Wallace v. Pfost*, 57 Idaho 279, 65 Pac. (2d) 725), 110 A. L. R. 622).

Nebraska, Secs. 60-801 and 60-302, 1937, Cum. Supp. to Compiled Statutes (sustained in U. S. Dist. Ct. of Nebraska in *Kenosha Auto Transport Co. v. Cochran* on March 1, 1938).

Nevada, 1935 Stat., p. 261, ch. 126, secs. 1, 2(g), 10(3) and (4).

New Mexico, Session Laws of 1935, ch. 56 (sustained in *Morf v. Bingaman*, 298 U. S. 407).

Oklahoma, Session Laws of 1935, ch. 50, art. 5, secs. 4 and 5.

Texas, Acts of 1935, 44th Legislature, p. 800, ch. 342, sec. 1.

Utah, Laws of 1935, p. 90, ch. 46, secs. 90-96, 138.

Washington, Remington's Rev. Stat., secs. 6382-60 to 6382-70.

Wyoming, Secs. 1(r), 15, 16, 17 and 21 of Ch. 65, Ses. Laws of 1935, as amended by Ch. 121, Ses. Laws of 1937.

In the following states previously existing statutes have been construed to regulate and tax the caravan movement. Specific rulings to this effect have been made by administrative agencies.

Arizona, Attorney General's Opinion of July 1, 1935.

Colorado, Public Utilities Commission 1938 Rules, Common Carrier rule 26, Commercial Carrier rule 6, Private Carrier rule 26.

Kansas, Kansas Corporation Commission ruling of September 17, 1935.

Missouri, Public Service Commission Rule No. 24-A of General Order No. 33-A, dated Sept. 17, 1938.

Montana, Attorney General Opinions, Vol. 16— No. 168, p. 172; No. 375, p. 368.

North Dakota, Board of Railroad Commissioners' construction of chapter 162, Session Laws of 1933.

Oregon, Public Utilities Commissioner's construction of Sec. 55-1357, Oregon Compiled 1935 Supp.

The Interstate Commerce Commission holds that the movement of motor vehicles on their own wheels for purpose of sale, for hire, is transportation of property for hire and is therefore subject to the Motor Carrier Act, 1935, Title 49 U. S. C. A., Secs. 301 to 327. This position was first taken in Administrative Ruling No. 33 of the Bureau of Motor Carriers of the Interstate Commerce Commission on October 16, 1936, as follows:

> Question: Is the delivery of automobiles under their own power, for compensation, in interstate commerce such a transportation of property by motor vehicle as to come within the provisions of the Motor Carrier Act, 1935?
>
> Answer: The interstate transportation of automobiles by the so-called "caravan method", if conducted for compensation by individuals or organizations holding themselves out to perform such a driving service, as a business and not as casual, occasional, or reciprocal transportation, is transportation of property by motor vehicle and is subject to the Motor Carrier

Act, 1935. It makes no difference whether some of such vehicles are towed by other vehicles or whether all operate on their own power.

Since that date the Bureau of Motor Carriers has administered the Act in conformity with this ruling, and this position was sustained by Division 5 of the Interstate Commerce Commssion in John P. Fleming Common Carrier Application, No. MC-48654, ... M. C. C. ....., on September 19, 1938, where it is said:

"Applicant's operations were conducted on June 1, 1935, solely by the driveaway or caravaning method of transporting motor vehicles. By this method, the transportation is performed by (1) individual driving of the vehicle under its own power; (2) driving one vehicle under its own power and towing a second vehicle attached to the first by a mechanical device generally called a tow-bar; (3) by bolster mount or full mount which consists of driving one vehicle under its own power and upon which another vehicle is partially (front wheels) or wholly mounted, or combinations of both.

These methods of conveying the traffic suggest the desirability of a brief discussion of whether the transportation performed is within the jurisdiction conferred upon us by the Act. As indicated below, no question appears to exist so far as towing of a vehicle is concerned. The dictionary definition[2], in a limited sense, however, leaves the impression that 'transportation' may be something other than the movement of

---

[2]Act of transporting, or state of being transported; carriage; removal; conveyance—Webster's New International Dictionary. Under the definition of "convey", this authority asserts that the synonym "transport" implies an actual carrying, as by vehicle or vessel.

an automotive vehicle under its own power. Corpus Juris defines 'transporting' as follows:

> As commonly understood, one is transporting an article when he is conveying it from one place to another. Transporting includes towing.

In their interpretation of federal statutes making transportation of a stolen motor vehicle, in interstate commerce, a criminal offense, the courts have uniformly held in sustaining convictions that driving of the vehicle under its own power is transportation. See *Whitaker v. Hitt*, 285 F. 797, *Hostetter v. United States*, 76 F. (2d) 921, and *Piper v. Bingamen*, 12 F. Supp. 755. We conclude that the methods followed by applicant in conveying the vehicles from one place to another constitute transportation within the meaning of the act. It makes no difference whether certain vehicles are towed by other vehicles or whether all operate on their own power.

Under part I, we have consistently regarded the movement over other than the owning railroad of locomotives under their own power as transportation. Tariff rates for such transportation are provided by rail carriers, and in certain instances we have approved a basis of rates therefor. See *Investigation and Suspension Docket No. 23*, 21, I. C. C. 103, and *Locomotives from and to the South*, 211 I. C. C. 114."

With two exceptions, all of the state statutes and administrative rulings define the regulated traffic as the movement of motor vehicles on their own wheels for the purpose of sale. Nebraska imposes a fee of ten dollars upon the towing of one vehicle by another except in emergency (Sec. 60-801, 1937 Cum. Supp. to Compiled Statutes) and requires any vehicle moved for the purpose of sale whether under its own power or towed to have a regular

Nebraska license plate (Sec. 60-302, 1937 Cum. Supp.). The Missouri ruling is restricted to caravaning for hire by common carriers.

No statute or administrative ruling attempts to define the included traffic as the operation of vehicles in caravans or fleets, and the Nebraska statute is the only one which imposes a special fee upon the hook-up towing operation.

The evidence establishes that of the vehicles subject to the act which come into the state from without at least eighty per cent are in caravans or fleets [Manford testimony, R. 75-76; attempted stipulations if considered, R. 72-75]. Of this eighty per cent, all [R. 76] or not less than half [R. 72-75] are in two-car hook-ups. So of this traffic not more than twenty per cent is composed of vehicles driven singly, not in caravans and not in towing hook-ups.

As has been pointed out above, this evidence is all of a general nature, and while it was adduced by appellees they plainly kept it in genral terms and made no attempt to show that it was applicable to their traffic. But on the other hand the specific description of appellees' traffic is wholly confined to the description of his operations made by appellee Asher [R. 105-107], an integrated fleet movement of 19 to 25 cars, which by stipulation is made applicable to all other appellees [R. 107]. Therefore, appellees cannot take advantage of the discrimination (if any) made by the act against the operators of the single cars.

Morf v. Bingaman, 298 U. S. 407.

However, we desire at this time to submit that the evidence justifies the classification made in the act as to any and all types of the included traffic.

The feature which most distinguishes this from any other highway traffic is the operation of fleets, commonly called caravans. This is such a marked characteristic that the term "caravaning" has in a few years become the standard descriptive term to denote the movement of motor vehicles on their own wheels for purpose of sale, whether such motor vehicles be operated singly and not in company with any other vehicles, whether in two-car hook-ups, or whether in actual caravans or fleets. See annotation in 110 A. L. R. 622. Note that the Bureau of Motor Carriers Administrative Ruling No. 33, heretofore set out, describes this traffic as the "caravan method". Observe that the Interstate Commerce Commission in the *Fleming Application, supra,* describes applicant's business as "the drive-away or caravaning method of transporting motor vehicles". *This is no accident or misdescription; the traffic is simply described in terms of the element which is its most outstanding attribute, the actual caravan or fleet movement.*

The reasons which have led to the movement of vehicles intended for sale in caravans have been heretofore discussed, and are fully described in the Ingels [R. 143] and Bates [R. 153] affidavits. It has been found to be the most practicable way of moving a large number of cars a long distance on the highway, particularly where, as in the operations of the appellees, the vehicles are driven by one-trip drivers obtained by want-ads and it is considered desirable to keep all the vehicles constantly under the supervision of the caravan manager. As this Court said in *Morf v. Bingaman*, 298 U. S. 407: "*Here it is the practice of transporting automobiles over the highways for purpose of sale which has given rise to the practice of moving them in caravans.*" (Italics supplied.)

The legislatures of various states were confronted with the problem of this traffic. In enacting legislation to regulate and tax the traffic of course the first problem was to describe adequately the included class. Only two possible descriptions were available, either the description of the class as the movement in caravans or the description that has actually been adopted in all of the above named states, the movement for purpose of sale. A statute describing the class as the movement in caravans would have been impossible of enforcement, and probably invalid because of vagueness. Obviously the description of the class by their occupation, the movement of vehicles for sale, was far simpler as to the drafting of the statute and as to enforcement of the statute when enacted.

And now giving to appellees every imaginable inference they can claim from the record, this description includes within its scope only those who actually do move motor vehicles in caravans, and includes all such, and of the total volume of the vehicles moved by such persons eighty per cent is moved in caravans; that consideration alone should justify the description of the class which the legislature adopted.

There is ample precedent for the action of the California and other legislatures in adopting the descriptions of the class which they did. The class may be defined by describing "those from whom the evil mainly is to be feared", *Patsone v. Pennsylvania*, 232 U. S. 138, 144; and a classification having some reasonable basis is not invalid *"because in practice it results in some inequality," Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78, nor "even though it may bear hard in some particular case." *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501.

The practice of moving automobiles long distances for purpose of sale gave rise to the practice of moving them in caravans in which many of the cars are in tandem hook-ups. Appellees conduct their business in that way, as do all others similarly engaged. The evidence shows the advantage of that method of conducting the business. If vehicles are to be driven long distances or across several states by drivers variously, often casually, procured, it is obviously advantageous to have such vehicles accompanied by and in charge of a manager and a mechanic. So the cars are dispatched in caravans of a size which makes it economically sound to have them accompanied by a manager and by a mechanic to see that they promptly and safely arrive at destination.

It was this practice that produced the evils and difficulties shown in the evidence and which induced the enactment of the Caravan Law. The legislature was confronted with a practical problem, one part of which was the description of the class. *As it was the practice of moving cars long distances on their own wheels for purpose of sale which gave rise to the practice of caravaning and its attendant evils, so the legislature described the class in the terms of the practice which created the evils and induced the law.*

The difficulties which the legislature and enforcing officials would have encountered had the legislature attempted to define the class as those who moved vehicles in caravans are evident. The enforcing officers would have been confronted with the easy evasion of stringing caravans out with a mile or so between cars upon approaching the border station and entering the state, and then closing up into standard caravan formation after getting into the

state and out of sight of the border station. True, traffic officers in the interior of the state would have caught some of the evaders, but many would escape. The difficulties are obvious.

The question of the practical utility and constitutionality of such a classification also would arise. The difficulty would not be the classification between caravan and non-caravan movement, but rather the vagueness and workability of the classification. That is, when is a caravan not a caravan: what distance, or lack of distance, between cars determines whether they are in caravan, and how many cars how close together make a caravan? That again suggests insurmountable difficulties of law drafting, and of action and interpretation facing enforcement officials. If a caravan were defined in terms of distance between cars, how easy it would be, accordionlike, to expand and contract in length according to the proximity of enforcing stations and officers.

Clearly the definition of the class used by the legislature was the logical and workable one. If a common practice creates well defined difficulties which call for legislative action, what better way to define the class than to include those following such practice and none others?

Central Lumber Co. v. South Dakota, 226 U. S. 157;

Patsone v. Pennsylvania, 232 U. S. 138.

Now as those engaged in the practice must be classified in terms of the practice because of the necessity of drafting a workable statute, they cannot complain because the class sometimes includes variations or departures by them from the particular practice at which the statute is aimed,

where such variations and departures are so closely related to the practice as to be within the definition of the class, or are, in truth, an integral part of the practice. That is, one who moves eighty per cent of his vehicles in caravans cannot complain because a statute, defining the class in terms of the practice that induced the caravan operation, includes and taxes and regulates the twenty per cent of the cars he moves singly. It is well settled that a legislature faced with the practical problem of defining the boundaries of a classification may include reasonable margins to avoid vagueness and insure workableness and effective enforcement.

Applicable here is the doctrine, invoked in varied situations, of *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192. A law forbidding the sale of intoxicating liquors also forbade the sale of non-alcoholic malt liquors. It was held that the inclusion of the nonintoxicating malt liquors in the prohibition was sustainable as a means of preventing evasions of a law actually aimed at intoxicants. On the question this Court made an oft repeated statement (at page 201):

> "It does not follow that because a transaction, separately considered, is innocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. * * * The statute establishes its own category. The question in this Court is whether the legislature had power to establish it. The existence of this power, as the authorities we have cited abundantly demonstrate, is not to be denied simply because some innocent articles or transactions may be found within the prescribed class."

Likewise in *Euclid v. Ambler Realty Co.*, 272 U. S. 365, this Court said (at page 388):

> "Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive or dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this Court has upheld, although drawn in general terms so as to include individual cases which may turn out to be innocuous in themselves (citing cases). *The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity.* Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation." (Italics supplied.)

Equally in point on other aspects of the rule above stated are *New York v. Hesterberg*, 211 U. S. 31; *Hebe Co. v. Shaw*, 248 U. S. 297; *Pierce Oil Corp. v. Hope*, 248 U. S. 498.

It is therefore submitted that this statute is valid as to every person within its scope because (a) it excludes the intrastate traffic which is all a single car, non-caravan movement over short distances, with professional, full-time chauffeurs (b) it includes the entire movement of vehicles in caravans; and (c) the inclusion of single cars which are not more than twenty per cent of the entire number of cars does not invalidate the act since the owners of such single cars are also the operators of the eighty per cent moved in caravans.

III.

The Fees Required Are Not Excessive.

The statute [Appendix A, p. 74 hereof] in effect requires two separate fees, each of which is exacted as a condition precedent to the use of the highways of the state for the purpose of caravaning. First, there is a fee of $7.50 "to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation." (Section 4.) Section 7 provides for the collection of the fees by the Motor Vehicle Department, and provides for such $7.50 fee to be paid into the Motor Vehicle fund in the State Treasury "to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted."

Second, there is a $7.50 fee "as compensation for the privilege of using the public highways of this State." (Sec. 4.) This fee is likewise collected by the Motor Vehicle Department, but is payable into the State highway fund "as compensation for the privilege of using the highways of this State." (Sec. 7.) The State highway fund is reserved for moneys for the acquisition of rights of way and the construction, maintenance and improvement of State highways. (Cal. Stats. 1935, Ch. 29, secs. 182, 183.)

We will refer first to those costs which must be charged against the first of these $7.50 fees. Preliminarily, however, we wish to emphasize that the burden rests on the plaintiffs to show that the fee is excessive for the declared purpose. (*Ingels v. Morf*, 300 U. S. 290.)

In that case the court held that the $15.00 fee prescribed in the 1935 Act was excessive for the purpose of policing and collection. In so holding, reference was made to certain evidence as to the costs involved. Therefore, solely in order to rebut any possible inference that such evidence as to costs was complete and, therefore, controlling in this case, and *not* in order to assume any burden of affirmatively showing that the present $7.50 fee for the purpose in question is reasonable, appellants have produced evidence to show that there are additinal costs which must properly be considered in determining the reasonableness of the present fee. We mention this to avoid any misunderstanding as to the reasons for going forward with the proof as to the costs involved in the $7.50 fee for policing and collection, while *not* having done so as to the costs involved in the $7.50 fee (to be considered hereinbelow) for the use of the highways.

Captain Personius, who was charged with the supervision of the caravan law in zone 2, the northern zone in the State of California [R. 81], testified generally with regard to certain of the costs of policing the highways and administering the Act. He pointed out that the duties of Supervising Inspector Bly were divided by Chief Cato, and one-half of his salary, or $150.00 per month, was apportioned to the enforcement of the Caravan Act. [R. 83.] This witness further testified that he himself devoted his full time to the enforcement of said statute, at a salary of $240.00 per month. He further testified that there were one additional district officer at $215.00 per month and three district officers at $200.00 per month, two of whom worked under Inspector Greer in Los Angeles and the other two under the witness in Sacramento, the latter two devoting their full time to the enforcement of

the caravan statute. [R. 84.] Inspector Greer, in charge of enforcement of the Caravan Act in the southern district, testified that he devoted approximately 50% of his time to his duties in connection with the administration of said Act. [R. 101.] His salary is not disclosed, but it seems reasonable to assume that it is not less than that of Captain Personius, or $240.00 per month.

Captain Personius further testified that at a conference between the Director of Vehicles, the Chief of the Highway Patrol, and himself, and another party, it was decided that thirty men were needed to handle the traffic by reason of the caravans. These men were sent to the highway patrol school and then were assigned to steady work on September 17, 1937. These particular men were not themselves assigned directly to caravan work but were assigned to replace men in various counties from which they had previously been taken for caravan work. [R. 85, 93.] This is clarified by the affidavit of E. Raymond Cato, Chief of the California Highway Patrol, who points out that the men who were actually assigned to the highways on which caravaning was most prevalent, were so assigned at various times through 1935, 1936 and 1937. [R. 157, 160, 163.]

Repeating the testimony which he gave at the hearing in the case of *Morf v. Ingels*, involving the constitutionality of the 1935 Caravan Act, Chief Cato states that in January or February, 1935, he appointed ten additional highway patrolmen who were assigned to highways over which caravaning most frequently occurred, and later, that same year, appointed four more. In addition to the foregoing testimony, Chief Cato has testified in the present case that in 1936 five more officers were assigned to highways where caravaning was most prevalent and where

there was the greatest increase in traffic, and, in 1937 fourteen additional officers were assigned to such highways. Also, Chief Cato points out that by reason of attempted evasion of the Caravan Act, by caravans operating over circuitous and unfrequented routes, it has been necessary to place patrolmen on certain highways on which it would otherwise not have been necessary to maintain such patrolmen. The number of said additional patrolmen is not specified, and it is not disputed that part of their time is devoted to general traffic enforcement; although as Chief Cato points out, it would not be necessary to maintain said patrolmen on said routes were it not for the caravans which are driven thereon. [R. 163-165.]

From the foregoing it is apparent that there is ample basis for the determination by the officers charged with the enforcement of the Caravan Act, that 30 patrolmen were needed to handle the traffic by reason of the caravans, and to enforce said Act. [R. 92, 93, 160.]

The cost of the operation of the motorcycles by these 30 officers is approximately $756.00 per month (63,000 miles at $.012 per mile. [R. 89.] Also, there is the transportation expense of $48.00 per month for Captain Personius [R. 88], and of $35.00 per month for Inspector Greer. [R. 89, 88, 102.]

In addition to the foregoing officers of the California Highway Patrol, three patrolmen have been assigned to investigate registrations suspected of caravaning into the State of California for the purposes of sale, and on which the caravan license fee was not paid. [R. 166.] These men are under the Bureau of Auto Theft and Investigation of the California Highway Patrol. [R. 161.] Presumably these officers, too, would have transportation ex-

pense of at least $25.00 per month, although there is no direct evidence in this regard.

Also, in connection with the enforcement of the Act it is shown that the following additional men have been required at the border patrol stations, which men would not have been required except for the purpose of performing their duties in assisting in the collection of the fees and in the regulation of caravaning upon the highways: Yuma, Yermo, Blythe and Daggett, two each, and one to Truckee. [R. 165-166.] Captain Personius also states that there was an additional man assigned to the station at Dunsmuir. [R. 91.] In this regard, it is further shown that all of the men at the border patrol stations devoted approximately 50% of their time to the administration of the Caravan Act. [R. 101, 87.] Fifty per cent of the salaries paid to said employees amounts to $372.50 at Daggett, $437.50 at Yermo, at least $367.50 at Fort Yuma, $425.00 at Blythe [R. 101-102], $297.50 at Dunsmuir, $234.50 at Clam Beach, and $377.50 at Truckee. [R. 87.] In connection with the collection of the fees, Chief Cato points out that there is a greater unit cost than is incident to the routine issuance of a temporary non-resident permit to ordinary non-resident traffic or the issuance of the regular resident registration certificates. [R. 166.]

It is further shown that in connection with the enforcement of the Caravan Act, printing, supplies and stationery, costing $600.00, had been furnished to the border stations under the supervision of Captain Personius. [R. 88.]

Presumably, at least as many supplies would be required by the border stations in the southern part of the state, although there is no positive showing in this regard. Similarly, the cost of supplies for other offices and persons having duties to perform under the Act is not affirmatively shown. Likewise, it is obvious that a certain portion of the plant maintenance costs of the border patrol stations would be a proper item for the legislature to consider in fixing the fee necessary to reimburse the state for its expenses under the Caravan Act, although the testimony does not show the amount of such costs. [R. 162.]

Chief Cato also points out that while no additional clerical help has been employed within the California Highway Patrol by reason of the caravaning of cars into the state "there have been two additional clerks assigned to that particular duty, that is, to the clerical work of enforcing said Caravan Act." [R. 166.]

In regard to the duties performed by the Division of Registration of the Department of Motor Vehicles, the supervisor of branch offices of said division, Mr. Ench, estimated that in the Sacramento office of said division, additional expenses of $675.75 per month were incurred in connection with the administration of the 1937 caravan statute. [R. 100.] Here again, it is reasonable to assume that there were expenses for supplies in connection with the duties performed under the Act by persons in said division, although there is no showing as to the amount thereof.

Recapitulating, then, the evidence justifies the following costs as a proper charge against the $7.50 fee assigned to the Motor Vehicle fund.

	Monthly	Annually
One-half Bly salary	$ 150.00	$ 1800.00
Personius salary	240.00	2880.00
District officers:		
One at $215.00	215.00	2580.00
Three at $200.00	600.00	7200.00
One-half Greer estimated salary	120.00	1440.00
30 patrolmen at $170.00	5100.00	61200.00
Motorcycle expense of 30 patrolmen	756.00	9072.00
Transportation expense of		
Personius	48.00	576.00
Greer	35.00	420.00
3 investigating patrolmen at $170.00	510.00	6120.00
Motorcycle expense for said 3 patrolmen	75.00	900.00
Border Stations:		
	Monthly	Annually
Daggett	372.50	4470.00
Yermo	437.50	5250.00
Yuma	367.50	4410.00
Blythe	425.00	5100.00
Dunsmuir	297.50	3570.00
Clam Beach	234.50	2814.00
Truckee	377.50	4530.00
Supplies		600.00
Division of Registration	675.75	8109.00
Annual Total		133,041.00

As has been pointed out, there are other items of expense which the legislature undoubtedly had in mind as being a proper charge against said $7.50 fee, but which items have not been established with sufficient certainty to justify their inclusion in the above recapitulation at fixed amounts. However, the court may properly take into consideration the existence of such items. In any event, the sums definitely accounted for so greatly exceed any possible income which may be derived from said fee, that it could not affect the result herein if the court did not consider the more or less uncertain additional items. For that matter, even if the court chose to disregard or depreciate many of the items set forth herein as certainly established, the result would likewise still be the same; that is, that the legislature did not fix a fee which was so greatly in excess of that which was reasonably necessary for the purposes for which the fee was imposed, as to render the imposition of said fee an unconstitutional act.

As a matter of computation for the assistance of the court, if it be assumed that there would regularly be 14,000 vehicles annually, the $7.50 fee thereon would be $105,000.00. In this regard, however, it should not be overlooked that it is undisputed that since the 1937 Act became effective the volume of caravan cars coming into this state has substantially decreased. [R. 159, 108.]

EVIDENCE IN REGARD TO THE "COST OF * * * MAINTAINING THE HIGHWAYS," I. E., IN REGARD TO THE REASONABLE AMOUNT OF THE SECOND $7.50 FEE.

As has been noted, the statute also provides for a $7.50 fee "as compensation for the privilege of using the public highways of this State." (Sec. 4.) This fee is likewise collected by the Motor Vehicle Department, but is payable into the State highway fund "as compensation for the privilege of using the highways of this State." (*Id.* Sec. 7.) The State highway fund is reserved for moneys for the acquisition of rights of way and the construction, maintenance and improvement of State highways. (Cal. Stats. 1935, ch. 29, Secs. 182-183.) Section 6 of the Caravan Act of 1937 provides:

> "The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways."

"The burden rests on appellee to show that the fee is excessive for the declared purpose." *Ingels v. Morf*, 300 U. S. 290, 296; *Interstate Busses Corp. v. Blodget*, 276 U. S. 245; *Clark v. Poor*, 274 U. S. 554.

Appellees have stressed the fact that there are approximately 500,000 non-resident vehicles which annually enter the State of California which are *not* required to pay the fee prescribed by the Caravan Act. The legislature apparently determined that the State is adequately recompensed by other means for the use of the highways by these automobiles, and for any increased policing costs occasioned thereby. In any event, such use is so clearly of a different sort than that which comes within the Caravan Act that it cannot be seriously contended that the legislature was unreasonable or arbitrary in determining that a fee should be charged for the use of the highways for transporting vehicles for the purpose of sale, and that a fee should not be charged for the occasional pleasure use of the highways by tourists from other states, driving their own cars. Certainly, such evidence does not show that the *amount* of the fee charged for the privilege of using the highways for the transportation of automobiles for the purpose of sale, is *unreasonable*. *Dixie Ohio Express Company v. State Revenue Commission*, decided by this Court on January 30, 1939, 59 S. Ct. Rep. 435.

The District Court in its opinion made no attempt to take the foregoing factors into consideration. Its position appeared to be that no necessity existed for the classification from which the fees are derived. The Court, however, plainly did not understand the evidence. This appears in the statement in the last paragraph on page 38, Record; the Court plainly enough did not have in mind at that point the testimony of Asher [R. 105], who spoke for all of the appellees [R. 107]; or the testimony of Manford [R. 75]. At the top of page 40, Record, a

statement appears which apparently was intended by the Court to show, among other things, lack of necessity for the expenditures which the state officers claim are necessary for policing the traffic and enforcing the act. We examine this statement at some length as an illustration of the Court's complete misinterpretation and misunderstanding of the record.

The Court states [R. 40] that the records of the Public Service Commission of Nevada [which is the affidavit of Lee S. Scott, R. 142] show that "a total of only 9 cars were brought into California for sale over Highway 50," during the first seven months of 1937. And the Court adds: "These undisputed figures put in grave doubt the question as to whether substantial traffic problems exist by reason of caravaning."

It requires only a little reflection and a reference to any standard highway maps of Nevada and California (or see United States Bureau of Public Roads maps) to see how wrong the Court was. In the first place, when the Nevada records in question refer to a U. S. Highway by number they refer to it as a "*Gateway*" [R. 143], obviously the point where entry was made into Nevada from the east, and plainly not where the cars left Nevada and entered California on the border between the two states. Gateway certainly means entrance, and it is a matter of common knowledge that the fee would be collected at or as near the point of entrance to the state as possible and not at the point of departure. The evidence shows the California fee is collected that way at the border stations. The fact that cars enter Nevada on the east on one highway assuredly does not establish that they enter California on the same highway; that is, the fact that the Nevada records show fees collected from only nine cars at the

"Gateway" on U. S. Highway 50 between January 1, 1937, and August 1, 1937, does not prove or even raise an inference that other cars entering Nevada on other highways did not, at some point in the state and after the fee was paid, switch over onto No. 50 and enter California on it.

However, affirmative proof of the Court's erroneous deductions is furnished by a reference to the Nevada and California highway maps. To begin with, U. S. Highways 50 and 40 enter the eastern boundary of Nevada at a common point just west of Wendover, Utah, and separate into two highways right at the Nevada boundary. It is probable, though not necessary to support our argument, that the Nevada authorities collect the fees at this common point and in common parlance refer to it as the No. 40 Gateway. In the second place, this Court can judicially know that anyone entering Nevada at the common point of the two highways on a commercial trip to California will follow No. 40 as far as Reno, Nevada. No. 40 traverses the easiest route through Nevada as far as Reno. It follows the main line of the Southern Pacific Railroad, the historic overland route first used to reach California; and the towns are much closer together than on any other Nevada highway. On No. 50 the towns are as much as one hundred miles apart and the highway does not parallel any railroad. However, upon reaching Reno on No. 40, some cars will leave 40 and go south a short distance and enter No. 50 at Carson City, Nevada, and proceed on into California on No. 50. There are fleets on U. S. Highway 395 north of Reno in Lassen County, California [R. 95], and as these fleets proceed south they enter U. S. 50 at Carson City Nevada, and their natural course is to proceed on into California again on U. S. 50.

IV.

If Any Part of the Act Is Invalid the Court Should Hold That Part Invalid Only and Leave the Remainder of the Act in Effect.

The Act in section 14 [R. 15] contains a saving clause, which will be given effect by this Court. *Weller v. People*, 268 U. S. 319; *Carley & Hamilton v. Snook*, 281 U. S. 66; *Frost v. Oklahoma Corporation Commission*, 278 U. S. 515; *Supervisors v. Stanley*, 105 U. S. 305, 314.

The effect of these decisions and of the saving clause is that even if the Court concludes that one, or even more, parts of the act are invalid, but finds them severable, the rest of the act will stand. If the $7.50 fee for regulation is excessive, or if section 8 (the zoning provision) is invalid, a complete and workable act remains without either or both of these provisions, and such remainder should be allowed to stand.

The principle of severability upon partial invalidity prevails in California; two California cases being outstanding authorities, *Bacon Service Corpn. v. Huss*, 199 Cal. 21, 248 Pac. 235; *Ex parte Schuler*, 167 Cal. 282, 139 Pac. 685.

This principle, if necessary, calls for particular application in this case. That California faces a pressing problem with respect to the caravaning of automobiles is evident, not only from the record in this case, but from the fact that the legislature enacted the present law immediately after the former law was declared invalid by this Court on March 1, 1937, in *Ingels v. Morf*, 300 U. S. 290. Two successive legislative acts upon the same subject matter constitute a weighty pronouncement of the findings of the legislature as to the necessity of this legislation.

The previous act did not have a saving clause. The present act shows a careful attempt to conform to the actual holding in *Ingels v. Morf, supra,* with a further attempt to meet the other principal objection urged by the appellee in that case but which the Court did not pass upon. And in addition to the two principal substantive changes introduced by the legislature into the second act, a saving clause was written in. This constitutes assuredly the plainest possible declaration by the legislature that the saving clause should be given literal application by this Court.

In dealing with a difficult problem the legislature has thus requested the courts not to annul the act completely, but, if any part or parts are shown by actual facts to be invalid in practical operation, to strike down only such invalid portions and leave an act still remaining that can, if necessary, be amended so as to conform to the Court's decision. This Court judicially knows that one of the states' most pressing problems is "to mitigate the destruction of life, limb and property resulting from the use of motor vehicles," *H. P. Welch Company v. State of New Hampshire*, decided by this Court on January 30, 1939, 59 S. Ct. Rep. 438. This problem is exceedingly intricate and complicated. If all of the act cannot be saved, assuredly the legislature's plea that the remainder be allowed to remain in force should not go unheeded.

By its prompt reenactment of the present act the legislature has made plain its concern for the regulation of the subject matter. Details of its application, the specific fee applied, or the class or classes to which it applies are local problems. The invalidity of any specific provision pertaining to any of these subjects should not operate to invalidate the entire act. The remainder should be allowed

to stand and the legislature should be allowed to correct or to treat its local problems by the correction or adjustment of such special provisions in accordance with the pronouncements of the Court.

Conclusion.

For the foregoing reasons, which are summarized in the summary of argument on page 13 hereof, it is respectfully submitted that the act in question, chapter 788, Statutes of 1937 of California, should be declared constitutional by this Court, and that the decree of the District Court should be reversed and the injunction against the enforcement of the act dissolved.

Respectfully submitted,

EARL WARREN,
Attorney General of California;

FRANK W. RICHARDS,
Deputy Attorney General of California,
Attorneys for Appellants,
Los Angeles, California.

APPENDIX A.

"CARAVANING" of motor vehicles.

An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

(Chapter 788, Statutes of 1937. In effect July 2, 1937.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State.

SEC. 2. The term "dealer" when used in this act shall mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein deemed, or of selling or exchanging new or used vehicles, and shall in-

clude every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representative which has previously been performed or paid by his principal.

SEC. 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

SEC. 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

SEC. 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

SEC. 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways.

SEC. 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; provided however, that should a motor vehicle support fund be created in the State treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees shall be paid into and become a part of the State highway fund in the

State treasury. The moneys so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

SEC. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

ZONE 1—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

ZONE 2—That part of the State of California not included within Zone 1 as herein defined.

SEC. 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a

penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

SEC. 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale, and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be prima facie evidence that a vehicle not previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold or offered for sale within thirty days after it has been operated over the public highways of this State.

SEC. 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

SEC. 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

SEC. 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county

jail for not more than six months, or by both such fine and imprisonment.

SEC. 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

SEC. 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for the violation thereof," approved July 6, 1935, is hereby repealed.

SEC. 16. This act is hereby declared to be an urgency measure within the meaning of Section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately.

APPENDIX B.

"CARAVANING" of motor vehicles.

An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof.

(Chapter 402, Statutes of 1935.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle; for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

SECTION 2. No person, firm or corporation shall use any highway in this State, for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon

the windshield of such vehicle or in other prominent place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

SEC. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

SEC. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permittee complying with all laws of the State of California and the United States.

SEC. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

SEC. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.

Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

SEC. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.